LORI G. BEAMAN

Policy, Integration, Action, and Social Inclusion in Canada[1]

Introduction

In October 2012, the Government of Canada announced the cancellation of contracts for non-Christian prison chaplains in a seemingly blatant display of state support for Christian hegemony and concomitant disregard for religious minorities, religious diversity and Canadian multiculturalism.[2] The office of the minister of public safety explained in an email to CBC News:

> The minister strongly supports the freedom of religion for all Canadians, including prisoners … However, the government … is not in the business of picking and choosing which religions will be given preferential status through government funding. The minister has concluded … chaplains employed by Corrections Canada must provide services to inmates of all faiths. (CBC News 2012)

As James Beckford and Sophie Gilliat (1998) argue, the treatment of religious minorities in prisons, and specifically the presence of chaplains who are not members of the religious majority (Christian, in the Canadian case) acts as a barometer of commitment to diversity in a society. The announcement by the federal government seemed to be rather at odds with the notion that Canada is genuinely committed to supporting its religious minorities. What is the context in which religious minorities exist in Canada? Is religious diversity supported by the state, and indeed in the broader public sphere, in any meaningful way?

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[2] In April 2013, the federal government rehired four of the previously terminated non-Christian chaplains to provide services to inmates in British Columbia, though a spokesperson for Corrections Canada said "the government is taking interim measures to meet the needs of inmates until they can roll out a revised plan for spiritual services" and was not reversing the layoffs (CBC News 2013a). In November 2013, it subsequently hired a private company to provide chaplaincy services to prisoners, including those of minority faiths (see Cohen 2013). More recently, Canada's former minister of multiculturalism tabled a bill aimed at banning the wearing of the niqab during citizenship ceremonies, despite the Federal Court of Canada ruling just months before that a pre-existing regulation that banned the face coverings was unlawful (see CBC News 2015).

What does this announcement mean in terms of religious diversity and its management in Canada?

A pervasive way of talking about religious diversity and its so-called management is to refer to the need to accommodate and to tolerate religious minorities. While this sort of tolerance talk is rather globally widespread, this article focuses primarily on the Canadian context, arguing that, given the specific social and legal history of Canada, a "tolerance" approach is unacceptable. This is so particularly in its present iterations that rely on a passive notion of social inclusion and a formal model of equality. The first section of this article outlines three important parts of the Canadian social context: multiculturalism; the legal conceptualization of religious freedom; and the emergence of reasonable accommodation in the public sphere. The second section reflects more fully on the problems with a model that relies on tolerance and accommodation, focusing especially on its link to a weak model of social inclusion and a formal model of equality.

The Canadian Context: (i) Multiculturalism

Like Australia, Canada has prided itself on its embracing of a programme of multiculturalism that is in some measure perceived to have been one of its most important global exports.[3] This determined commitment to multiculturalism has partly distinguished Canada from its American and European counterparts, especially of late. As with Australia, the meaning and implementation of this programme varies widely, but it is commonly accepted that integration rather than assimilation or *pillarization* (segregation) has been its goal (Ryan 2010). To some extent, Canada is "stuck" with multiculturalism as a programme because it is embedded in our constitutional framework: Section 27 of the *Canadian Charter of Rights and Freedoms* states that the provisions of the *Charter* are to be interpreted in keeping with Canada's multicultural heritage. Although this clause has been used unevenly (see Bahkt 2009), it solidifies multiculturalism as part of our legal and public discourse.

Until relatively recently, multiculturalism had a key place in Canadian public policy; however, it has been somewhat supplanted by discussions of "Canadian values" which are much less concerned with diversity and much more concerned with establishing a "we" whose primary heritage is British. That "we" is reflected in the story at the beginning of this article; the religious pedigree of

[3] See Kymlicka 2007. There is variability across Canada in relation to how multiculturalism is imagined. For example, some Quebec scholars and politicians have dismissed it as "Canadian" and not as representative of Quebec, which, some argue, is better understood through the concept of interculturalism. See Bouchard and Taylor 2008; Bouchard 2011.

that "we" is primarily Christian. This shift has been, as it was in Australia, due mostly to the political landscape and thus may be seen as part of the normal ebb and flow of politics. The anti-multiculturalism rhetoric in Canada has not been nearly as pervasive nor as forceful as that found in Europe, Great Britain, or the United States. The Canadian public still imagines itself as firmly embedded in a positive multiculturalism that extends beyond mere demographic description to include a programme of some sort, although there is a certain lack of clarity about the exact details of that programme.

Aside from political tests of multiculturalism, there are also some compelling academic challenges to the purpose and result of multiculturalism (see Day 2000; Bannerji 2001; Kernerman 2005; Nayar 2004). These challenges predate the "end of multiculturalism" discourse that has emerged in Britain and Europe and which has been carefully analyzed by Vertovec *et al*. (2010). Rather, they took up the promises of multiculturalism as representing either a coerced difference (see, for example, Bissoondath 1994) or a state programme to superficially acknowledge difference while pressing for assimilation and ensuring control over minority groups (see Day 2000; Kernerman 2005; and Bannerji 2001). Phil Ryan (2010) has responded in turn, arguing that multiculturalism has been an overall positive force in the Canadian context, both as a demographic reality and as a public and political programme. Perhaps Ryan's most important argument is that multiculturalism has shifted and changed over time and will continue to do so. More broadly, the point to be taken is that while the demographic reality of multiculturalism cannot be contested, as a programme or ideology there is little consensus and much debate.

How does this multicultural context link to religion? For the beginning decades after the enactment of the *Multiculturalism Act* in 1988 and the *Charter*'s endorsement of multiculturalism in 1982, religion played a relatively minor role in the public face of multiculturalism. However, as is the case in Australia, Europe, and Britain, religious identity has gained increased importance in conversations about diversity; indeed, some would argue that it has become the primary entry point into discussions about "diversity management." Thus, to some extent, religious freedom and multiculturalism have become conceptually entangled.

The Canadian Context: (ii) Religious Freedom

To many, religious freedom began in Canada with the enactment of the *Charter*. One hears reference to the ways in which the *Charter* has created a "rights culture" in Canada, most often from those who lament a shift in power relations that has offered sexual minorities, women, and visible minorities some relief from inequality. This debate is largely beyond the scope of this article, and the main point to be made is that religious freedom has a much longer history in Canada than is often acknowledged. Although resulting pri-

marily from legal cases involving Christian minorities, religious freedom has been part of the Canadian legal landscape for some time, most prominently in a series of cases emerging from Quebec in the 1940s and 50s involving Jehovah's Witnesses, particularly *Boucher v. the King* (1949) and *Saumur v. City of Quebec* (1953). To be sure, the Jehovah's Witnesses were a Christian group, but at the time they were imagined as posing a unique threat to the Catholic hegemony that existed in Quebec. The Supreme Court of Canada upheld their right to proselytize and condemned discriminatory practices against them because of their religion, thus laying the foundation for religious freedom as part of the constitutional framework of Canada.

The notion of multiplicities of religious beliefs and practices and the need to protect them can be traced even further back in Canadian history to the *Constitution Act* of 1867, which included protection for Roman Catholic schools in Ontario, a province with a Protestant majority, and Protestant schools in Quebec, which had a Roman Catholic majority. Moreover, although not protected, the First Nations peoples of Canada presented a third presence that had to be, at the very least, contended with. Initially, contending meant the denial of any aboriginal religion or spirituality and then attempts to eliminate it (criminalization of the sun dance, for example[4]), but more recently courts have had to acknowledge aboriginal spirituality, even if in unsatisfactory ways.[5] As I have argued elsewhere (Beaman 2010), this multiplicity of religious traditions has perhaps meant that Canadian courts may be better equipped to understand religion in a more expansive, and non-Christian, manner than their American counterparts (see also Sullivan 2005).

In 1982 the *Canadian Charter of Rights and Freedoms* came into force and effect, further solidifying the idea that religious freedom is part of Canadian legal culture. Unlike the United States, the constitutional discussion of religion does not include the idea of separation of church and state or any reference to establishment. Neither of these concepts is part of Canadian legal tradition nor, for the most part, of Canadian public discourse, although the dominance of US television culture and the Quebec struggle around laïcité have created more space for the notion of separation. This is countered by the explicit mention of God in the preamble of the *Charter*, which states: "Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law."

[4] The sun dance is an Aboriginal ritual that was done for a number of reasons (as part of a promise to show gratitude) which connect people to each other and to their creator (McMillan and Yellowhorn 2004: 153-54). The sun dance was banned in 1895 with changes to the *Indian Act* and the ban was lifted when the act was altered again in 1951; see Merry 1998: 27-29.

[5] See *Delgamuukw* v. *British Columbia* (1997); *Jack and Charlie* v. *The Queen* (1985); Borrows 2008; Forbes 2012.

Religion is also explicitly mentioned in sections 2 and 15:

2. Everyone has the following fundamental freedoms:
(a) freedom of conscience and religion;
(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
(c) freedom of peaceful assembly; and
(d) freedom of association.

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Section 1 of the *Charter* acts as a "balancing" section, negotiating between public good and individual rights and freedoms: "The *Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits presented by law as can be demonstrably justified in a free and democratic society." The Supreme Court of Canada has given a wide berth to the internal definition of religious freedom (and the lower courts have followed suit), preferring to take an inclusive approach to religion under section 2 and using section 1 to downsize, as it were, the breadth of religious freedom. Thus, for example, while a church which has marijuana use as a core sacrament is included under the definition of religion in Section 2(a), appeal courts have held that the public interest in prohibiting marijuana use outweighs the protection of religious freedom in this instance.[6]

The Supreme Court has developed a test for the Section 1 balancing process known as the Oakes test, which asks a series of questions in relation to the legislation being challenged under the religious freedom provision. So, in relation to the use of marijuana or the practice of polygamy, the courts would ask of the criminal code provisions:

1. Is the legislative objective being pursued sufficiently important to warrant limiting a constitutional right?
2. Are the means chosen by the state authority proportional to the objective in question? This includes: a) a determination of whether the decision, law, measure has a rational connection with the objective; b) whether the limit minimally impairs the right or freedom in question.

Although there is a rich body of post-*Charter* case law on religious freedom, this section will focus on three decisions of the Supreme Court of Canada to

[6] See *Assembly of the Church of the Universe* c. *Frelighsburg (Municipalité)* (2007); and *Assembly of the Church of the Universe* c. *Sutton (Ville)* (2007).

give a sense of the development of the Court's understanding of religion and religious freedom. Two of the three decisions opened new territory for religious freedom, with the final decision leaving the door open for a much more restrictive and less equality-based, and thus less inclusive, direction for religious minorities.

The 2004 *Syndicat Northcrest v. Amselem* decision was perhaps the broadest reading the Court had ever given to religion in its history. In that case the claimant was an Orthodox Jew who lived in a condominium building in Montreal. The co-ownership agreement, which is essentially a contract that the inhabitants of the building enter as a condition of living in the building, prohibited decorations, alterations, and constructions on the balconies. During the festival of *Succot* Mr. Amselem wished to build a *succah* on his own balcony, a structure resembling a tent that was prohibited by co-ownership by-laws. During *Succot* some Jews eat, sleep, and live in the *succah*. Although there was some evidence that a communal *succah* would fulfill the requirements of his religion, the claimant's interpretation was that he should build his own *succah* on his balcony. The Supreme Court accepted this argument, noting that aesthetic concerns should not outweigh religious commitment.

The *Amselem* case shifted Canadian jurisprudence in a number of ways: first, it introduced the notion of "sincerity" in a manner that had not been previously present. What mattered in the view of the Court was not the content of the belief but whether it was sincerely held. This tracked an often-repeated mantra in the courts that they were not charged with adjudicating, nor should they attempt to adjudicate, the content of religious beliefs. Second, this emphasis on sincerity shifted the focus to a subjective understanding of religion, rather than a focus on official doctrine. Third, the Court attempted to strike a balance between the individual believer and a broader idea of religion, noting that there had to be a relationship, or nexus, between the individual's beliefs-practices and religion. Thus, maintaining that the Court's approach was entirely subjective is incorrect. The overall importance of the case was its expansive reading of religious freedom, to the extent that the Court was willing to override a contract to protect it. Finally, the Court took a substantive approach to equality—although everyone was to live by the same rules regarding symbols on their balconies, this formal approach to equality was overridden to allow for difference, both in religious practice between groups, within a group, and in terms of differential impact. There is no requirement, for example, for Christians to erect outdoor structures to fulfill their religious beliefs. This means that for the Christians in the building there was no impact of the balcony restrictions on their religious lives.

The *Multani* v. *Commission scolaire Marguerite-Bourgeoys* case (decided in 2006) employed a similarly broad read of religious freedom. In that case, a Sikh schoolboy sought to have his right to wear his *kirpan* to school protected

under the religious freedom provisions of the *Charter*. The *kirpan* is a ceremonial sword or dagger carried by orthodox or fully-observant Sikhs. In considering various arguments put before it, the Court refused to accept the proposition that allowing Mr. Multani to wear his *kirpan* to school would mean that all the boys would want to wear knives to school or that they should be allowed to do so. Such a formal equality approach was unacceptable in the eyes of the Court, which recognized that religious difference required a robust protection, and thus upheld Mr. Multani's right to wear the *kirpan* to school.

The two cases combined to send a strong message that the Court was willing to use a substantive equality approach in thinking about religious difference. In both cases, the Court noted multiculturalism as a value that was important to Canadian society, and diversity as a fact of social life. However, a third case, decided in 2009, has cast a shadow on the promise of the broad approach taken by the Court in *Amselem* and *Multani*.

In that case, known as *Hutterian Brethren*,[7] a small group (250) of Brethren who live communally in Alberta sought to reinstate an exemption from having their photographs included on their driver's licences, which they believe contravenes the Bible. They had been granted an exemption for 30 years, but the government of Alberta revoked it in 2003, commencing the group's dispute with the Alberta government. The Supreme Court upheld the government's decision to require photographs and agreed with the government's evidence that exempting the Hutterites would compromise the security of the driver's licence system and risk identity theft. Thus, according to the Supreme Court the requirement to have photographs on driver's licences was a reasonable limit on the religious freedom of the Hutterites.

The Court reasoned that laws of general application should apply to everyone, and that the law could not respond to every miniscule infringement or inconvenience to religious freedom that might be caused by such laws (despite the fact that the Hutterian Brethren engage in the broader community for economic pursuits, health services, and other reasons). This somewhat begs the point that the *Canadian Charter of Rights and Freedoms* is specifically designed to protect minorities from majorities and especially to guard against the disproportionate impact of general laws on minorities. Thus, the notion that a model of formal equality can achieve this in essence misses the very point of a *Charter* protection. It is difference and adverse impact that most often require *Charter* protection. There are other noteworthy moments in the judgment, but perhaps one of the most surprising is the sudden transition of the Court from the identification of multiculturalism as a value to multiculturalism as a demo-

[7] *Alberta* v. *Hutterian Brethren of Wilson Colony* (2009).

graphic fact which the state needs assistance (from the court) in managing. Whereas diversity is previously imagined as something to be celebrated, encouraged, and part of Canadian life, it becomes something to be controlled and regulated in *Hutterian Brethren*.

Where does this leave religious freedom in Canada? In law, at least, it puts it in a rather tenuous position. Given the decision in *Hutterian Brethren*, the prospects for a wide reading of religious freedom are not good. The positioning of the *Hutterian Brethren* as a group seeking exemption, or accommodation, rather than a group seeking equality, signals a particular way of imagining religious minority groups in Canada, not only in law but more broadly.

The Canadian Context:
(iii) The Emergence of Accommodation in the Public Sphere

Woven through the legal discussion of religious freedom and public discourse on religious diversity is the idea that religious minorities must be accommodated. Within law, this conceptual touchstone had limited use until the *Multani* decision, when some of the Supreme Court justices attempted to import it from employment law situations[8] to help with the section 1 balancing clause. Oddly, while the Court took an overall approach that can be characterized as using a substantive equality model, in part it used the language of reasonable accommodation in the course of the decision. However, the *Hutterian Brethren* case specifically rejected the use of accommodation in considering how to balance an individual's claim to religious freedom with broader societal interests, adopting a formal equality approach that, as mentioned above, signals a worrisome direction in Canadian jurisprudence related to religious freedom. The status of reasonable accommodation as a legal tool thus remains a bit ambiguous, but the language of reasonable accommodation has "gone viral" outside of law, becoming the dominant way in which religious minorities are to be managed.

Although confined to the province of Quebec, the public discussions generated by the Bouchard-Taylor Commission may have had a large role to play in the solidification of the language of accommodation across Canada. Thus, a brief discussion of the background of the Commission is important, and in fact links to the discussion of the religious freedom case law outlined above. It is widely acknowledged that the *Multani* decision, while cause for celebration for those who support a broad interpretation of religious freedom under section 2(a) of the *Charter*, was also a major catalyst in the formation of the Commission in

[8] Employers owed a duty of reasonable accommodation to employees who were religious minorities, provided such accommodation did not cause undue hardship.

early 2007.[9] The Quebec government, in response to pressure from other political parties, the media, and a sense of rising fear of "out of control accommodation," struck the Commission to study the "problem" of what was described as excessive accommodation. One of the most interesting findings of the Commission was that almost all of the media reports about religious minority groups were exaggerated or miscommunicated the facts. Perhaps the one that struck the most resonant chord with Quebeckers was the "cabane à sucre" story which had been presented as a case of a group of Muslim visitors demanding that their baked beans be served without pork and insisting that other visitors to the cabane evacuate a room so they could pray. The Commission investigated the story and found that in fact the Muslim group had negotiated with the cabane owners while planning the visit so as to "accommodate" their religious needs, thus making a quintessentially Quebec experience accessible to them (Bouchard and Taylor 2008: 72).

In addition to recovering alternative versions of some of the more controversial media stories, the Commission held public hearings and received in total some 900 briefs from individuals and groups. The Commission process received broad media coverage, even outside of Quebec, and the language of accommodation was used repeatedly. The fulcrum in public discourse thus became not how religious minorities might be equal but how and whether they should be accommodated. The resulting 2008 report, which is over 300 pages in length, used the language of accommodation repeatedly, and, despite the authors' attempts to cordon off "reasonable accommodation" as a legal concept, even they themselves lapsed into the "common" use of this term. Media discussions about religious diversity became increasingly tied to the idea of accommodation, and the whole notion that religious minorities are asking for accommodation, or that they should be accommodated, or that there is too much accommodation has become part and parcel of public discussion. The next section of this article explores in more detail why this is problematic.

Tolerance and Accommodation

At first glance, it might seem that the idea that one should be tolerant of others is a sensible idea. Similarly, the notion that religious minorities should be accommodated, within reason, may also seem to be in itself a reasonable proposition. What is the objection to tolerating and accommodating religious minorities? Tolerance is used in a range of ways and has had a number of incarnations (see Bader 2011 for an elaboration). In his 1689 "A Letter Concerning Toleration," John Locke advocated for toleration, except for atheists and Roman Catholics. Locke's statement is indicative of the core problem with tolerance: that it creates the possibility of a state of exception that is often dif-

[9] See, for example, Côté 2008; and Lefebvre 2008.

ficult to challenge. A present day version of Locke's exception is, for example, the "illiberal Muslim" or illiberal groups more generally. Wendy Brown (2006) has done an extensive analysis and critique of the concept of tolerance and the work it does in relation to minorities. Ann Pellegrini and Janet Jakobsen (2004: 14) ask: "What does it feel like to be on the receiving end of this tolerance? Does it really feel any different from contempt or exclusion?"[10] Tolerance and accommodation create a hierarchical division between the "Us" who give (generously and benevolently) and the "Them" who receive (gratefully and in recognition of the generosity of the giver).

Some scholars argue that even though tolerance and accommodation may have some undesirable aspects, they can also incorporate notions of equality and thus can avoid the hierarchical problems noted above (see Bakht 2012, 2009; Modood 2005). My position is that while this might be conceptually possible, in their current use, tolerance and accommodation are trapped in a hierarchical positioning which always implicates an "us" and a "them." This "us" and "them" is embedded in a sedimentation of unequal power relations that cannot, for example, acknowledge or address historical privilege, the links between social institutions and hegemonic groups, or contemporary moral panics. Thus, however benevolent or well-intentioned advocacy for tolerance and accommodation are, they cannot avoid the disparities I (Beaman 2012, 2014) and others such as Brown (2006) and Jakobsen and Pellegrini (2004) have noted.

Other scholars have also argued that tolerance is better than nothing, and in fact this is an approach that is often raised when I present these ideas in public lectures—some people are grateful that there is at least a sense that tolerance is necessary. Veit Bader (2011: 17) argues that "[g]ritted teeth tolerance and collective tolerance are part and parcel of any minimalist morality and of any decent polity." Is tolerance better than outright hatred or refusal to engage at all with those who are marked as being "other"? Yes, most assuredly. The problem, though, is that many Western democracies have premised their vision of basic human rights on the notions of equality and tolerance and accommodation which do not facilitate the achievement of a robust practice of equality. If tolerance and accommodation are not enough, what might an alternative framework be?

Before treading into this territory it might be useful to explore the notion of equality and religious diversity more broadly. Two models of equality have dominated the approach to religious minorities. First, formal equality has permeated both the French and Turkish approaches to religion. In this model

[10] For other critiques of tolerance and/or accommodation, see Wong 2011; and Day and Brodsky 1996.

citizens are free to participate in a particular vision of a shared values set that is imagined to represent the nation. Thus, the ban on headscarves in France is seen as creating an equal playing field in which no one is singled out for special treatment or recognition because of a religious symbol. This model has gained increasing attention in Quebec, where the former government attempted to emulate French *laïcité* by proposing a Charter of Values[11] which, if passed into law, would have banned the wearing of conspicuous religious symbols by public sector workers, including teachers, doctors, judges and police officers (see CBC News 2013a). Substantive equality, on the other hand, has attempted to recognize religious difference and to see equality as not meaning sameness but as in fact accounting for difference. As previously mentioned, both the *Amselem* and *Multani* cases in Canada could be seen as fitting under this model. To be clear, equality models operate at a number of levels in society. So, for example, while law often adjudicates using models of equality, these models also infiltrate social discourse and social institutions. There is vacillation between sameness and the social rules necessary for its achievement, and difference and its recognition.

Here it may be instructive to think more fully about the idea of diversity management, the conceptualization of difference as a problem, and the ways in which equality links to these. This territory has been partially covered by critical theorists of multiculturalism (mentioned above), who have argued that multiculturalism problematizes difference and then reifies it and socially controls it. The bare fact of difference is in part what I think Veit Bader (2011) is responding to when he insists on a necessity for gritted teeth tolerance, even when we might wish that it be more than that. While I agree with Bader that this is indeed the least we can expect, I would push for more, especially in the Canadian context, with its multiple legal protections and public support for multiculturalism at a level that is higher than in many other Western democracies. This is not to suggest that there is any superior position in the Canadian approach, indeed the prison announcement is suggestive of deep schisms in the Canadian landscape around difference and multiculturalism and antagonism toward substantive or deep equality.

If legal and social inclusion are the goals in acknowledging bare difference, which might be based in gender, sexual orientation, race, ethnicity and or religion, then we must ask how it is possible to achieve inclusion beyond mere formal equality. The interplay between difference and equality is not new territory for social theory—feminist theorists have agonized over this problem, exploring its contours in relentless detail. Perhaps their most significant con-

[11] The full title of Bill 60, known as the *Charter of Values* was: "Charter affirming the values of State secularism and religious neutrality and of equality between women and men, and providing a framework for accommodation requests."

tribution was to destabilize the idea that formal equality was a sufficient basis on which to build an inclusive society. This argument was based in part on the inherent differences between men and women that made sameness of treatment, or formal equality, an inadequate approach for those situations in which women's difference was key. Thus, for example, pregnancy was identified as a key experiential difference between men and women. However, difference and its recognition posed some serious problems, and the equality versus difference dilemma has had, in the words of Rosemary Hunter (2008: 2), a "chilling, if not paralyzing, effect on feminist theorizing about equality."[12] Disappointment with legal approaches to equality led many feminists to abandon it as a viable strategy for women (see Faraday *et al*. 2009). Indeed, the gap created by this withdrawal has been significant, as the rhetoric of the achievement of women's equality has gained substantial purchase in the last decade (see Hemmings 2011; McRobbie 2009) even as gender difference has been reworked to secure patriarchy's hold (see Fine 2010). This unfortunate disconnect has resulted in a reconstitution of formal equality as the basis upon which inclusion is formulated and imagined and, coupled with the cost-benefit calculations of neoliberal policy making, has enabled the sort of announcement regarding prison chaplaincies that introduced this article.

The retreat of discussions about substantive equality, which had largely been led by feminists, has had serious implications outside of the move to gender equality. Formal equality, or the idea of sameness, has gained traction, especially in the face of the moral panic that has surrounded Islam in the West. Analysis of racial inequality, as with gender inequality, has disappeared into a sea of public discourse that imagines that "we" have gender equality and that "we" are not racist. The notion that structural inequality may prevent access to social and economic benefits has also been subsumed under the banner of a presumed equality that makes formal equality a more tenable option.

The idea of accommodation, then, is a concession to the idea of difference and thus inevitably results in a positioning of the minority request as a request for special treatment or an exemption or exception to the rules that everyone else must follow. Inclusion in this passive model means following the existing rules rather than actively negotiating the boundaries of the rules to incorporate a wider range of possibilities. In a perverse understanding of justice, the minority is seen as perpetuating an injustice rather than asking for equality.

[12] Significant theoretical contributions by Scott 1988, O'Donovan and Szyszczak 1988, Cooper 2000, West 1987, and Johnson 2002 reflected on the dimensions of difference and equality.

Conclusion: A Global Shift and Patterns of Inclusion

In what way does the Canadian approach to religious diversity resemble that of other countries, especially—but not exclusively—that of Western democracies? I say 'not exclusively' because it is quite apparent that China, for example, is also seeking to manage or control religious diversity in ways that are not entirely dissimilar to those of France, the Netherlands or Belgium, for example. While enforcement mechanisms may look different, the desire to identify "good religion" and to distinguish it from "bad religion" is common. So too is the development of mechanisms of control, whether through immigration law, laws regarding religious clothing in so-called public space, or the local regulation of religious space.

Although this article has focused on Canada, the ideas of equality, inclusion and diversity are common across a number of Western democracies. Also common are the challenges to multiculturalism, a rising discourse of diversity management, and a rising anti-immigrant sentiment. Embedded in all of these is the idea that religion, and especially religious diversity, is a problem to be solved or managed. Moreover, in almost every case an established religion, whether constitutionally or not, is part of the social fabric that is woven through who "we" are and through the institutional structure of each nation. These establishments are often unacknowledged, and yet they inform the public imaginary in important ways, especially in often unnamed anxieties about loss of identity.

One interesting aspect of the global response to diversity is an emerging discourse of religious freedom. Although this may seem like a positive development, Elizabeth S. Hurd (2012b) and Winnifred F. Sullivan (2005) have raised some serious concerns about the links between discourses of freedom and patterns of establishment. Sullivan has argued convincingly that within the United States, religion, and thereby religious freedom, is understood in Protestant terms. Moreover, her examination of an Evangelical prison programme reveals a rhetoric of universality that presents Christianity as offering universal values. Hurd moves her analysis outside of the United States, and argues that religious freedom is promoting a political agenda that is driven by a particular understanding of religion and more importantly, that

> [t]he top-down promotion of religious freedom creates a world in which religious difference becomes more real and more politicized. It draws lines between communities, horizontally and hierarchically. It presses dissenters, doubters and families with multiple religious affiliations to choose a side. It compels them to define their identities in religious terms: "Are you this or that?" (Hurd 2012b; cf. also Hurd 2012a)

This universalization of Christianity is ubiquitous: one need only examine, for example, the *Lautsi v. Italy* (2011) decision of the Grand Chamber of the European Court of Human Rights to see the ways in which the idea of a universal

Christianity (in that case Roman Catholicism) is used to defend the placement of a crucifix at the front of a public school classroom.

In Canada the *Lautsi* argument was a cornerstone of the Quebec Court of Appeal decision in *Saguenay (Ville de) v. Mouvement laïque québécois* (2013), which involved a challenge to both the recitation of a prayer prior to a municipal council meeting in the Quebec municipality of Saguenay and the presence of a crucifix and a Sacred Heart statue in council chambers. The case was appealed to the Supreme Court of Canada (*Mouvement laïque Québécois v. Saguenay (City)* (2015). The Supreme Court did not rule on the crucifix or statue for procedural reasons, but held that the City of Saguenay could not include the prayer under the guise of heritage and culture. The Court left open the possibility, though, that a religious practice or symbol could be supported as heritage or culture (and quite possibly as representative of some sort of universal value).

The issue of exemption, which has become the battlefield on which religious freedom is being fought,[13] was a core theme in another recent Supreme Court decision involving a private Catholic high school in Quebec that sought to be exempt from the provincially mandated Ethics and Religious Culture program (*Loyola High School v. Quebec (Attorney General)* (2015)). Although the government's implementation scheme allowed for exemption, exemption comes with certain costs, including the possible interpretations of religion as both being special and asking for special treatment. The Court's decision found that the state's justification for not granting an exemption to the school violated the collective aspects of religious freedom in that the state was essentially forcing the Catholic school to teach Catholicism in a manner that was dictated by the state.

Stepping back from these specific legal developments, the Canadian example supports the call for a more critical examination of religious freedom: returning to our opening discussion, while the government eliminates contracts

[13] In *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission* (2012), for example, the US Supreme Court invoked the ministerial exemption doctrine to rule that the firing of a teacher who had developed a disability and worked at a church-run school was not in violation of the *Americans with Disabilities Act*, placing the church in a zone of exemption wherein it has the authority to bypass basic human rights protections: "The interest of society in the enforcement of employment discrimination statutes is undoubtedly important. But so too is the interest of religious groups in choosing who will preach their beliefs, teach their faith, and carry out their mission. When a minister who has been fired sues her church alleging that her termination was discriminatory, the First Amendment has struck the balance for us. The church must be free to choose those who will guide it on its way" (*Hosanna-Tabor*, at § 710).

for non-Christian chaplains in the prison system and declares that Christian chaplains can meet the needs of all prisoners whether they are Christian or not, it simultaneously established an Office of Religious Freedom housed in the Department of Foreign Affairs, Trade and Development. There has been much criticism of this move, stemming especially from the fact that initial consultations involved primarily Christian participants. The worry has been that the Office of Religious Freedom was established primarily to ensure that Christian missionizing remains possible in countries that are hostile to this activity.

In this time of accelerated global communication, transportation, and human circulation it is imperative that we consider patterns around religious diversity both within individual nation states as well as in the global context. Exploring the similarities between approaches to religious diversity, including its demarcation as a "problem," the development of management strategies, and the idea that religious minorities are at best entitled to tolerance and accommodation (certainly not substantive equality that might require us to re-examine our social structure and institutions) can reveal a great deal about the limits of Western democracy and the ideals of liberalism as well as our own anxieties.

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